



Zoning Board of Adjustment

Wednesday, December 20, 2017

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Annual Orientation- FY 18 Zoning Board of Adjustment

Welcome & Overview

**Douglas Schomburg, AICP
City Planner-Development**

Planning Department (FY 18)

- **Director- Lisa Kocich-Meyer, AICP**
- **Department Divisions**
 - **Development Planning (Douglas Schomburg)**
 - **Long Range Planning (Ruth Lohmer)**
- **Development Planning is liaison to ZBA:**
 - **Case preparation and presentation**

Development Planning:

- **Staff Liaison role to Board**
 - **Advises Board**
 - **Prepares Case Materials**
 - **Coordinates with other City Staff including Legal Department**

Texas Local Government Code

- **Ch. 211 & 212 Authorizes Planning & Zoning Commission**
 - Charged with making zoning recommendations to Council
- **Ch. 211 Authorizes Zoning Board of Adjustment**
 - Charged with hearing and deciding upon relief from zoning regulations

Board Authority

- **Authority under Texas statutes**
 - **Chapter 211 (Zoning)**
 - **Bulk regulations (not land use)**
- **City Charter**
- **Development Code**
- **Adopted Rules of Procedure**

Adopted Rules of Procedure:

- **Under Ch. 211 of Tx. Local Govt., a Zoning Board of Adjustment is required to have adopted rules**
- **COSL ZBA operates under Board Rules**
 - **Criteria includes, but not limited to, swearing in of speakers, attendance, meeting times**
 - **Meetings are set as 3rd Wednesday of month unless cancelled for lack of a case**

Adopted Rules of Procedure

- **Attendance for Meeting- Board is 5 members, with alternate system**
- **Although City Secretary's Office polls for attendance, expectation is that all regular members and alternates will make the scheduled meetings, and notify City when unable**
- **Alternates should attend all meetings and be prepared to fill in for regular members when needed**

Adopted Rules of Procedure

- **When alternates are not seated at the dais to fill in for a regular member, expectation is to stay as an audience member for meeting**
- **This allows for familiarizing with issues and decision-making for various types of cases**

Types of ZBA Cases

- **Variances to bulk and specialized zoning standards**
- **Special Exceptions**
- **Appeals**
- **Infrequent role as Airport Zoning Board of Adjustment (height variances to aviation requirements)**

ZBA Cases- Overview & Criteria

Katy Goodrich

Planner II

Behind the Scenes

- **Staff review and analysis**
- **Field investigation**
- **Information provided to Board**
 - **Written Agenda Requests**
 - **Oral presentation**

Behind the Scenes

- **Developer and citizen assistance**
- **Complete application ready for Board**
- **Meeting set-up**
- **Public hearing notice preparation and notification**

■ Overview- Variances

Variances

- **Can provide a relief from certain bulk and other special zoning regulations when certain circumstances exist**
Ex.: Board grants a 5' variance from front commercial bldg. setback of 30' if criteria for variance is met
- **Not authorized to hear a “use” variance for property where a different use is wanted from what district allows**

Variances

4 out of 5 vote

- **Not contrary to public interest**
- **Special circumstances or conditions of land or building**
- **Literal enforcement of ordinance resulting in an unnecessary hardship**
- **Spirit of the Ordinance is observed and substantial justice done**

Criterion One

Not contrary to public interest

- **Staff can assist with analysis**
 - **Public safety issues (ex. fire access)**
- **Context of case to surroundings**
 - **(ex. area setback patterns)**
- **Public Comments / Concerns**
- **Subjective**

Criterion Two

Special circumstances or conditions that apply to land or building

- **Applicant provides information and presents to ZBA**
- **Staff analysis could point to potential circumstances and conditions**
- **Subjective, some prior examples have included unique lot size, elements of an existing bldg., etc.**

Criterion Three

Literal enforcement of the ordinance results in an unnecessary hardship

- **Question of what is reasonable as to necessary / unnecessary**
- **Hardship should not be economic / financial**
- **Subjective**

Criterion Four

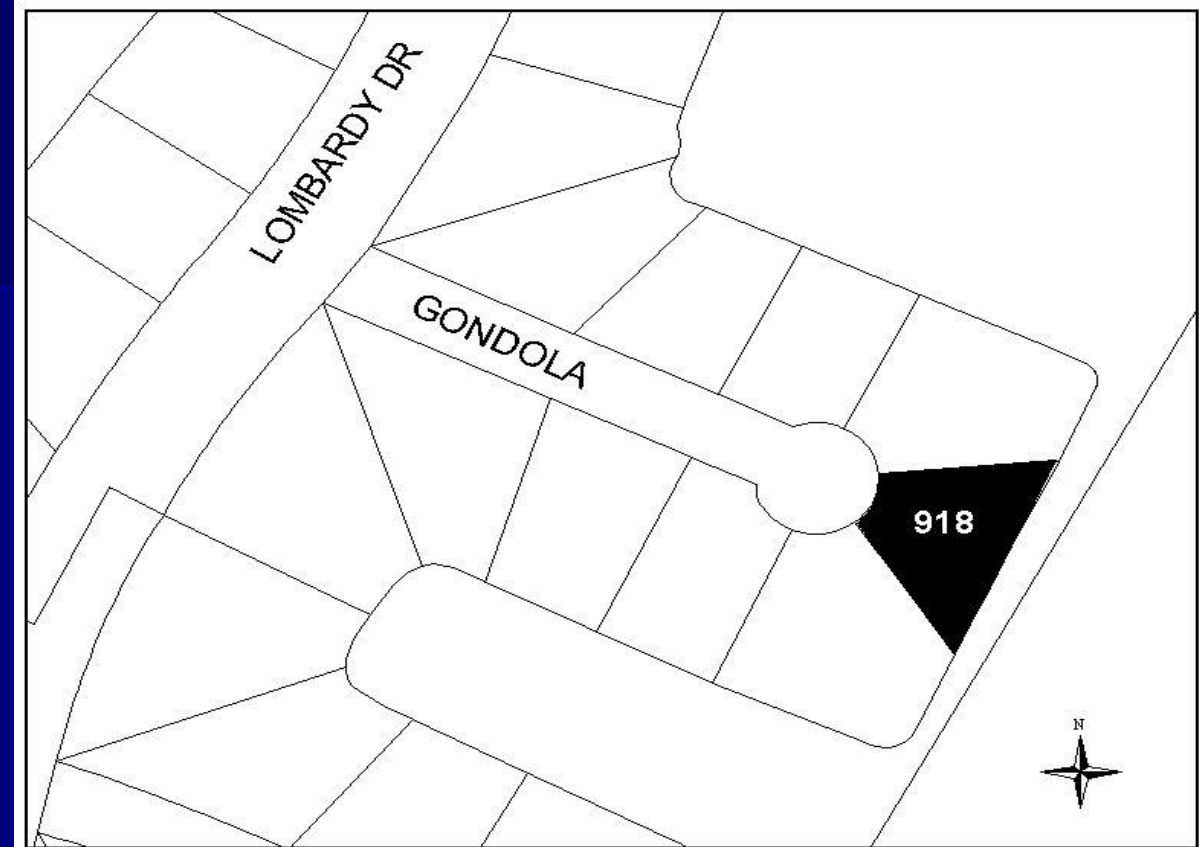
If granted, the Spirit of the ordinance is observed, and substantial justice done

- **Question of the spirit of the ordinance observed / substantial justice**
 - **Board weighs the intent of the ordinance against the special circumstances / conditions present**
 - **Subjective**

Vicinity Map Example

H.O.A.
Notified

200' Notice Given



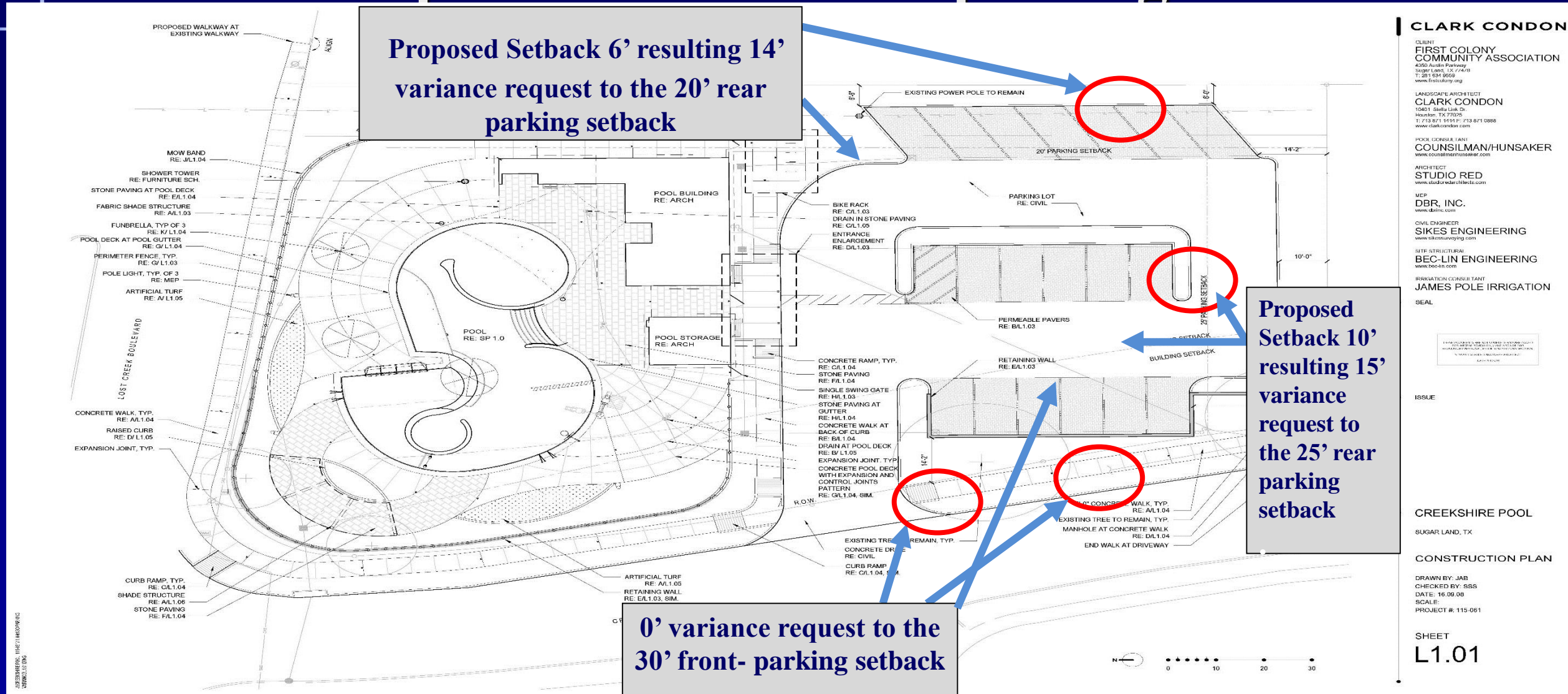
Variance Request
918 Gondola

Example Variance- Parking Setback Case



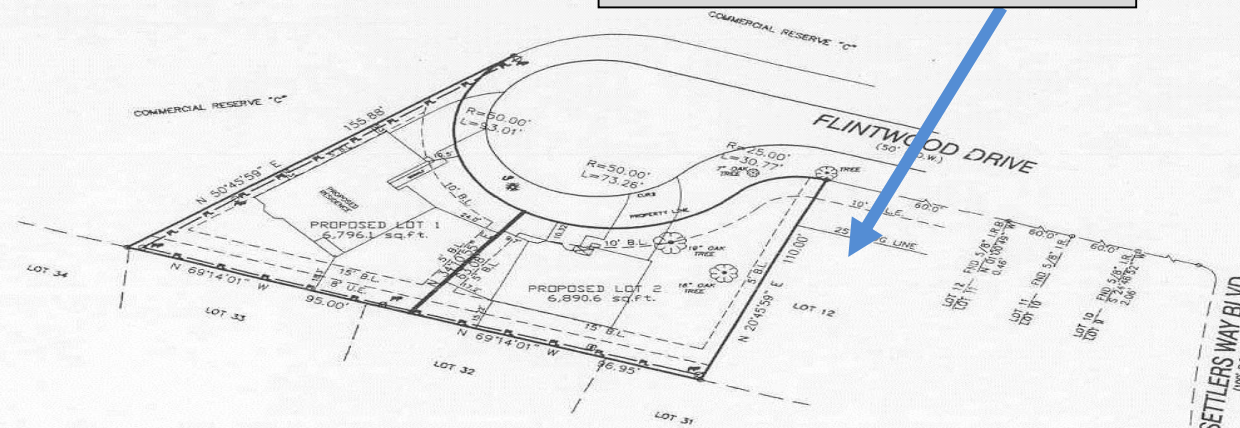
Proposed Pool Complex Site

Requested setbacks on parking lot



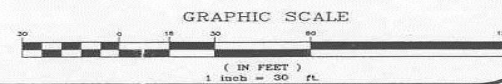
Variance Ex.: Site Plan Drawing

Setback Variance- Ex.
Physical condition of
existing trees affecting
house placement

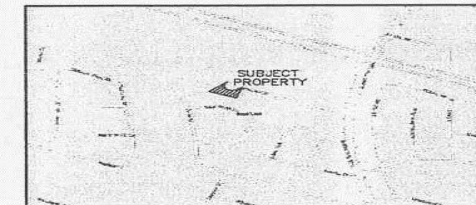


SITE PLAN

PROPOSED RE-SUBDIVISION OF LANDSCAPE RESERVE "B"
SETTLER'S PARK SECTION 3, VOLUME 27, PAGE 13
MAP RECORDS FORT BEND COUNTY, TEXAS.



PROPOSED LOT SIZE
LOT 1 6796.1 SQ. FT.
LOT 2 6890.6 SQ. FT.



BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS IN FLOOD ZONE "X" AS SHOWN ON FLOOD INSURANCE RATE MAP NUMBER 48157C0255, REV. DATE OF JANUARY 31, 1987. NO FIELD SURVEY WAS PERFORMED TO DETERMINE THIS ZONE AND EXACT LOCATION CAN ONLY BE DETERMINED BY AN ELEVATION STUDY. WE DO NOT ASSUME RESPONSIBILITY FOR EXACT DETERMINATION.

I, FRED F. LAWTON, a Registered Professional Land Surveyor in the State of Texas, do hereby certify that this survey was this day made on the ground under my supervision of the property described hereon (and/or by notes and bounds on attached sheet), is correct and that there are no encroachments apparent on the ground, and that all improvements lie wholly within the property lines, except as shown or noted hereon. This survey is certified for and provided solely for use of the current parties and no license has been created, expressed or implied, to copy survey except as is necessary in conjunction with the original transaction. This survey performed without the benefit of a title report, some easements and building lines may have been filed under separate instruments and are not reflected hereon.

Witness my hand this 23rd day of July 2003.

FRED F. LAWTON
Registered Professional Land Surveyor #5530

PURCHASER: LANDMARK HOMEBUILDERS, INC.
ADDRESS: VACANT LOT ON FLINTWOOD DRIVE, FORT BEND COUNTY, TEXAS

JOB NO.: MB1076 SCALE: 1"=30' DATE: 7-23-03 SHEET 1 OF 1 DRAWN BY: KT

Hughes-Southwest Surveying Company
11231 Richmond Ave. Ste. D-105 Houston, Texas 77082
Tel. (281) 496-9977 • Fax (281) 496-9989
1-800-336-2840
www.hughessw.com
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MAY 11 2004

Possible Variance Conditions

- Any conditions placed on a variance approval are designed to ensure compliance (ex. site plan elevations), or mitigate effects of variance (ex. tree protection, screening, buffering, or other elements for proximity issues)

Possible Variance Conditions

- Usually, site plan and elevations are a condition (ensures certainty)
- Past conditions have also included elements such as tree protection, additional screening
- Note- Board has ability to grant variance for less relief than requested

■ Overview- Special Exceptions

Special Exception

- **Tx. Statute allows Special Exceptions (SE's) as a tool for zoning relief**
- **Council authorized SE process in 2006 to replace variances for residential lots platted prior to annexation**
- **Allows property to comply with recorded setbacks (pre-annex.) instead of later zoning dist. setbacks**
- **Criteria involves compatibility rather than hardship**

Special Exception Criteria

- **Platted prior to annexation**
- **Recorded restrictions are less restrictive than required by zoning**
- **Special exception would not be less restrictive than recorded restrictions (plat / deed restrictions)**
- **Detrimental to public welfare or injurious to neighborhood?**

Criterion One

Property was platted prior to annexation into corporate limits

- **Applicant provides information and staff verifies and presents to ZBA**
- **Not subjective**

Criterion Two

Recorded Plat / recorded restrictions are less restrictive as to setbacks than those required by zoning

- **Applicant provides information and staff verifies and presents to ZBA**
- **Not subjective**

Criterion Three

Granting Special Exception will not establish a setback that is less restrictive than setbacks from recorded plat / recorded restrictions

- **Applicant provides information and staff verifies and presents to ZBA**
- **Not subjective**

First Three Criteria

- ✓ Pre-annexation platting
- ✓ Setbacks less restrictive than post-annexation zoning
- ✓ Request is not less restrictive than pre-annexation setbacks

Criterion Four:

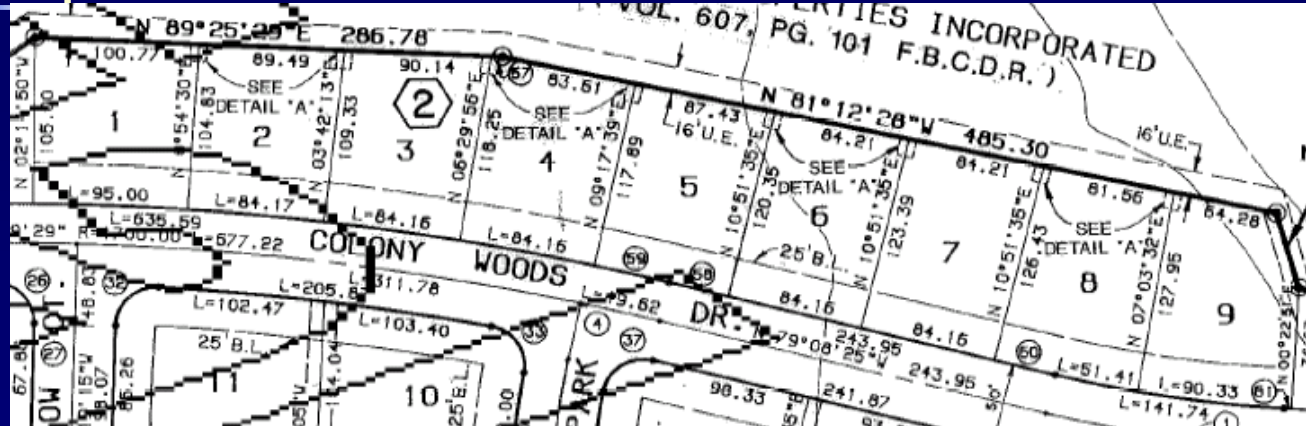
- ❑ *Not detrimental to public welfare or injurious to property within District or neighborhood*

Staff Report Analysis

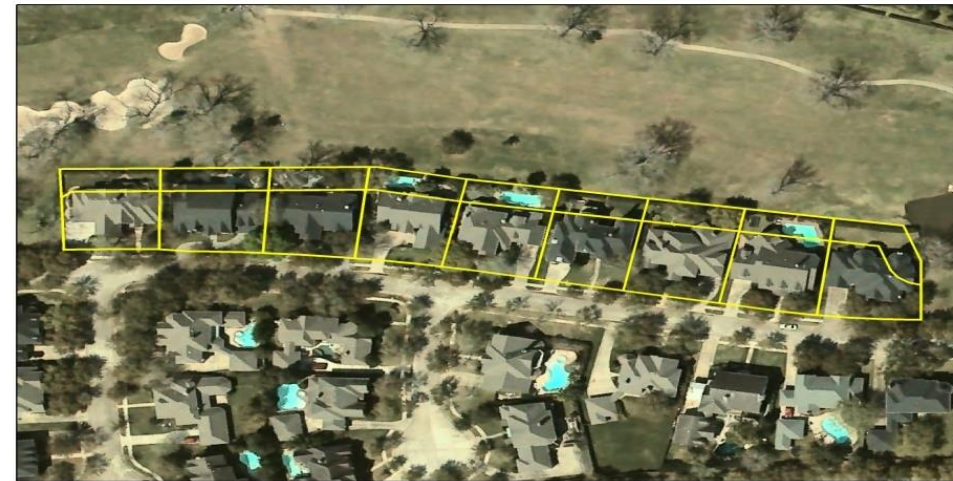
Criteria Four: Staff Reports will provide information and analysis regarding the case with regard to any anticipated detriments:

- **Public safety issues (ex. fire access)**
- **Context of case to surrounding neighborhood (ex. adjacent prop. setback patterns)**
- **Additional analysis if needed by ZBA (architectural / landscape setting)**

Example of Setback Analysis



**Recorded Plat vs. Projected
Zoning Setbacks**



Decision Options - Approval

- ✓ **Pre-annexation platting**
- ✓ **Setbacks less restrictive than post-annexation zoning**
- ✓ **Request is not less restrictive than pre-annexation setbacks**
- ✓ **Not detrimental to public welfare or injurious to property within District or neighborhood**

Decision Options - Denial

- ✓ Pre-annexation platting
- ✓ Setbacks less restrictive than post-annexation zoning
- ✓ Request is not less restrictive than pre-annexation setbacks
- ✗ *Not detrimental to public welfare or injurious to property within District or neighborhood*

Decision Options – Approval with conditions

- ✓ Pre-annexation platting
- ✓ Setbacks less restrictive than post-annexation zoning
- ✓ Request is not less restrictive than pre-annexation setbacks
- ? *Not detrimental to public welfare or injurious to property within District or neighborhood*

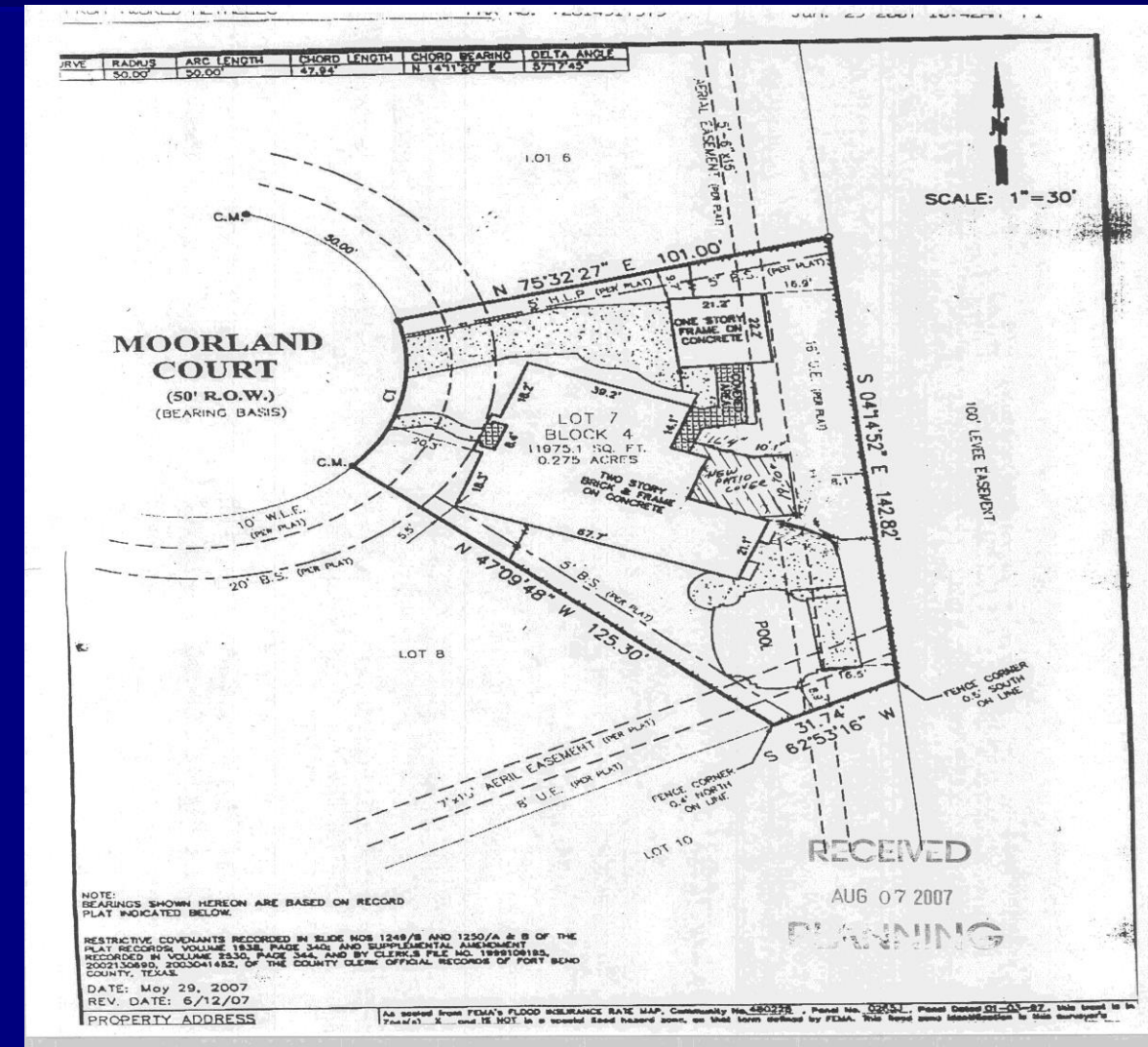
Possible conditions /

- Reasonable conditions/restrictions
 - Example (Cap on sq. footage)
- Regulation between what is proposed and granted
 - Example (10' setback requested / 7' granted)
- Inclusion of Site Plan & Elevations

Example Site Plan

Area in question

- Existing structure does not comply with rear setback
- Patio cover extends 14' into 30' setback
- Proposed addition consistent with existing and neighboring structures



ZBA- Other Areas of Board Review

**Douglas Schomburg, AICP
City Planner-Development**

Appeals

Can provide an outlet for determination as to whether a City staff member (admin. Officer) is correctly interpreting or carrying out City regulations

Appeals

- **Development Code establishes role of ZBA in appeals**
 - **Applicant stating “incorrect” decision made by city officials**
 - **Burden of proof is with applicant**
 - **4 out of 5 vote to overturn decision**

Appeals (cont.)

Can provide an outlet for determination as to whether a City staff member (admin. Officer) is correctly interpreting or carrying out City regulations

Ex.- If staff interpretation of part of a code provision determined to be incorrect, then Board decision becomes the rule in that part of code

Airport Zoning Board of Adjustment

Chapter 9 of Development Code establishes Airport Height Hazard Regulations

ZBA serves in role of Airport Zoning Board of Adjustment if a height variance application is filed

Requires an FAA determination for case

Board decides- staff not recommending

Airport Zoning Board of Adjustment

The City has not had a height variance filed to date

**Should a request be filed, staff will conduct a detailed
orientation with the ZBA for role as Airport ZBA**

No cases pending

Legal Considerations

Eugenia Cano

First Assistant City Attorney

Open Meetings Act

Texas Government Code, Chapter 551

The purpose of the Act is to require the governmental decision-making process be open to the public.

Does Act apply to ZBA?

- Yes, ZBA is subject to the Act per Section 211.0075, Tex. Local Gov't Code.

What are the Basic Requirements?

- **Post notice of Meetings 72 hours in advance—including posting on internet website.**
- **Notice must give the date, hour, place and subject matter of each meeting.**
- **Decisions must happen in a public meeting.**

Can items not on agenda be discussed?

- **No. At a posted ZBA meeting, a member may not “discuss” any item if it has not been posted on the agenda for discussion. The member or staff may give factual information or policy statements in response to an inquiry made at a meeting.**

What is a Meeting?

- A meeting =
- A quorum (3 ZBA Members)
- Public business or issue within jurisdiction+
Deliberation (verbal exchange),or
ZBA calls, conducts or is responsible for
meeting and members receive information from
third person

What isn't a meeting?

- A social function unrelated to public business...
- Regional, state or national conventions or workshops...
- Ceremonial events...
- Press conferences... where
- No formal action, discussion incidental

Examples-Not Meeting

- **Seminars;**
- **Holiday events;**
- **Chamber functions;**
- **Appreciation dinners;**
- **Festivals.**

Examples of Meetings

- Formal meeting
- Attendance at another entity's meeting
- Workshops
- E-mails
- The “walking quorum”

A walking quorum

- **A serial meeting of less than a quorum**
- **An overlapping series of meetings when quorum is not in same room at same time**
- **Includes e-mails, texting, and other electronic communications (Facebook, Twitter, other media)**
- **Watch out for that “Reply all” button**

Relevant exception

- *Legal – Give legal advice or discuss litigation.*
- **Final decisions in open meeting.**
- **Attendees – City's attorney and other necessary City staff**

What are the consequences (civil remedies)?

- **If action taken and meeting not posted, action is voidable through civil suit brought by an interested person.**

What are the consequences (criminal)?

- **If member calls, organizes, or aids in calling or organizing or participates in an unlawful closed meeting;**
- **If member conspires to circumvent the Act by meeting in less than a quorum for the purpose of secret deliberations.**
- **If member participates in unlawful closed meeting**

What are the consequences (criminal)? cont'd

- **The penalty is:
\$100 to \$500 fine;
1-6 months in county jail; or
Both fine and jail.**

What are some best practices?

- **Separate public business from private.**
- **Ask the City Attorney's Office.**
- **Don't email other public officials re ZBA matters.**
- **Don't post on facebook, twitter or blog unless willing to risk violation.**
- **Avoid quorum of ZBA outside formal meeting unless covered by exception.**
- **Stick to subject matter on agenda.**

Time to ask questions

- Questions?





MINUTES

MINUTES

**Regular Meeting
May 17, 2017**

***Ms. Glenda Gundermann
City Secretary***





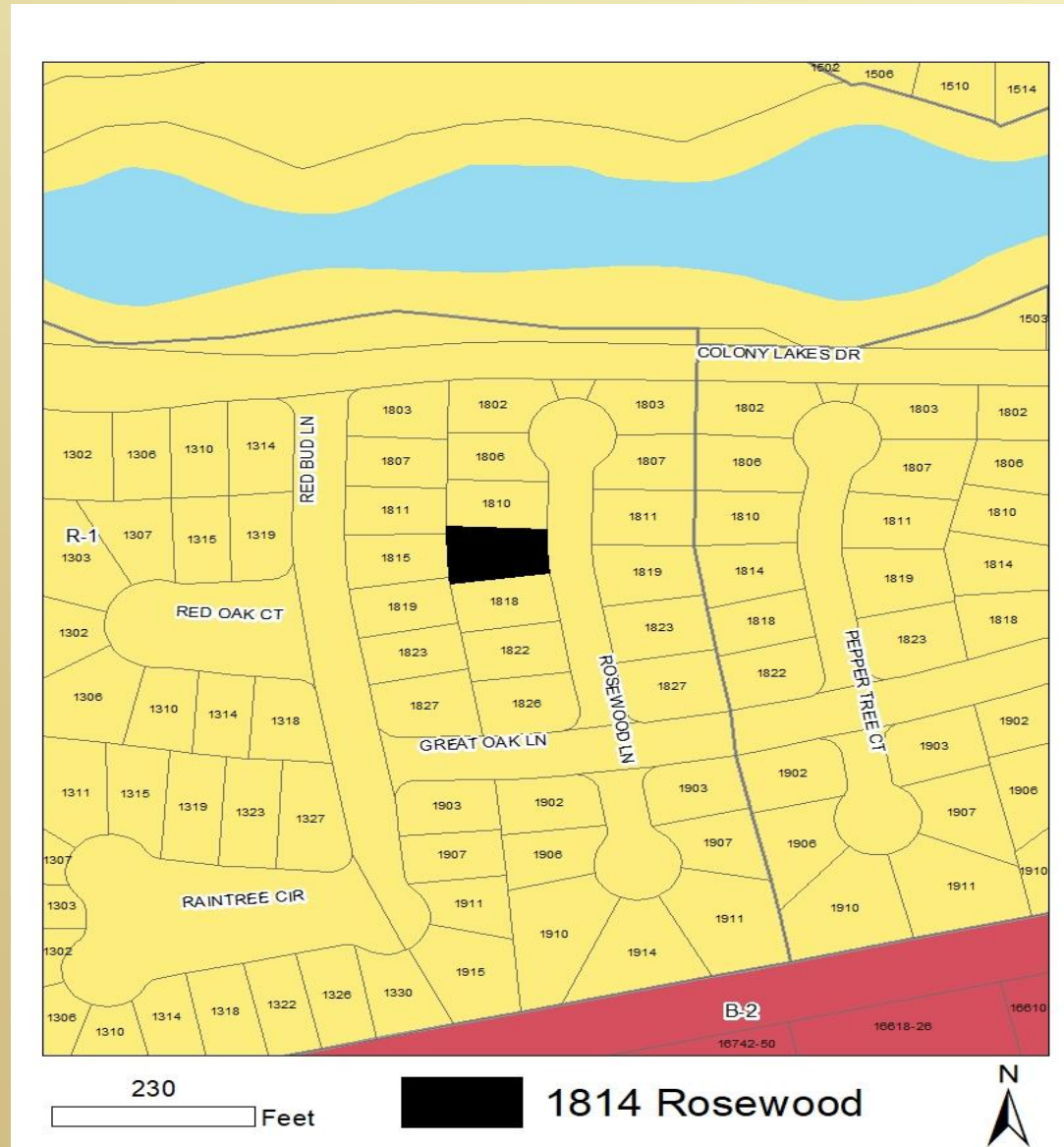
PUBLIC HEARING

CONSIDERATION AND ACTION

**Special Exception to the Rear Yard Setback Requirement for 1814
Rosewood Lane, Lot 11, Block 3, The Lakes Section One, in the
Standard Single-Family Residential (R-1) District**

Ms. Katy Goodrich
Planner II

Vicinity Map

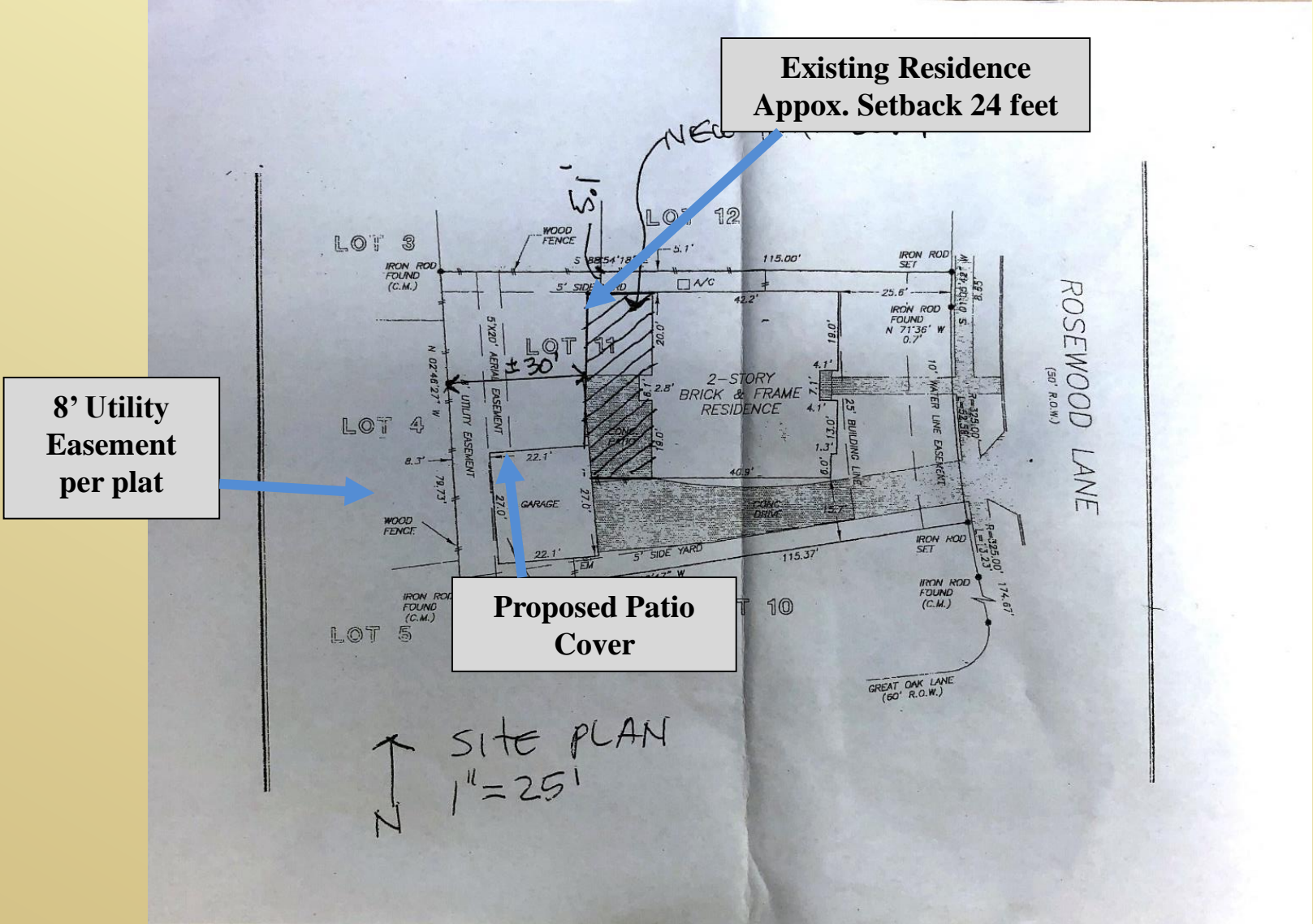


- The Lakes, Section 1
- R-1 zoning
- Platted in 1996
- Annexed in 1997
- Proposal: Patio Cover Addition

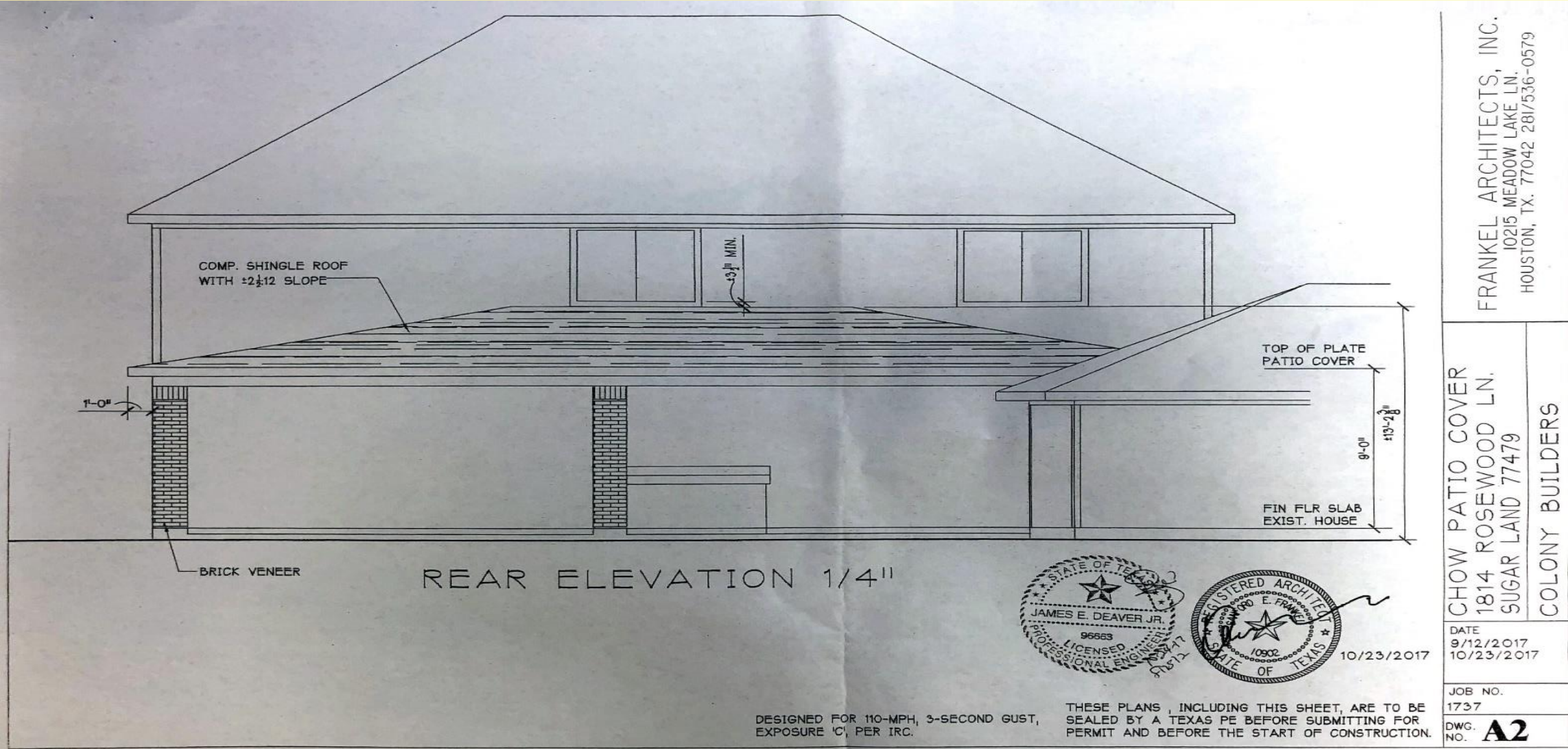
Case Overview

- **The recorded plat established 8-foot rear U.E.**
- **R-1 zoning district requires a 15-foot rear yard setback**
- **The existing residence is setback 30 feet.**
- **The Special Exception would allow the patio cover to meet the rear yard setback as recorded on the plat.**

Site Plan



Elevations



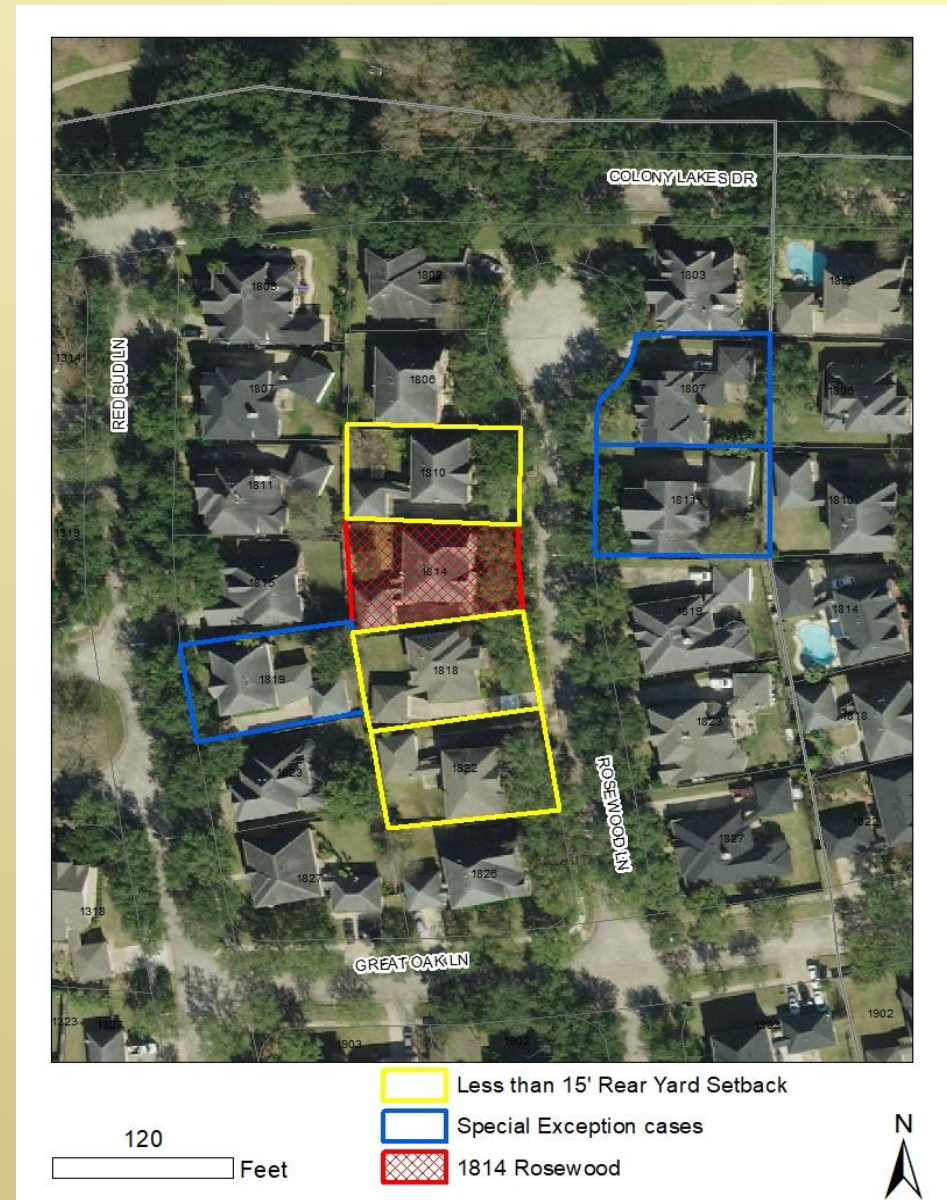


Public hearing sign in front of residence



Facing towards the area of patio cover addition

Aerial Photograph Exhibit



Neighborhood Analysis

- **Proposed patio cover addition appears to be architecturally compatible with the neighborhood**
- **Approximately three homes within the immediate area do not meet the rear yard setback requirement of 15 feet**
- **Three similar approved Special Exception**

Special Exception Criteria

- **Meets first 3 Criteria:**
 - **Platted prior to annexation**
 - **Recorded restrictions – less restrictive than setback per zoning**
 - **Special Exception – not less restrictive than recorded restriction**
- **4th Criteria: Detrimental to public welfare or injurious to neighborhood?**
 - **No apparent issues**

Public Hearing

- **Notification posted in newspaper and on City's website**
- **Property owners within 200-ft notified**
- **HOA notified**
- **Courtesy notification sign at property**
- **Staff has not received any informational inquiries**

Staff Recommendation

- **Approval of Special Exception**
 - **In compliance with site plan and elevations**





Next
Zoning Board of Adjustment
Meeting

January 17, 2018

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